7-062 2004 Serbian Asylum appeal

IMMIGRATION APPEAL TRIBUNAL

Appeal No: KK (Risk – Return - Suicide – Roma) Serbia and Montenegro [2004]UKIAT00228
'Reported'

Date notified: 13/08/2004

Before:
Mr Andrew Jordan (Vice President)
Mrs E. Morton

KK Serbia and Montenegro [2004]UKIAT00228
Appellant

The Secretary of State for the Home Department
Respondents

Determination and Reasons

KK (Risk - Return - Suicide - Roma) Serbia and Montenegro [2004]UKIAT00228

Representation:

For the appellant: Ms J. Wood, counsel

For the respondent: Mr G. Elks, Home Office Presenting Officer

1. The appellant is Roma and a citizen of Serbia and Montenegro who appeals against the determination of an adjudicator, Mr Michael D. Oakley, promulgated on 5 February 2003, dismissing his appeal against the decision of the Secretary of State to refuse both his asylum and his human rights claims.

2. The appellant was born on 29 March 1980 and is 24 years old. He claimed he entered the United Kingdom on 16 January 2002 and claimed asylum on 18 January 2002. The Secretary of State refused his claim and made a decision on 23 July 2002 to issue directions for the appellant's removal to Serbia. This gave rise to a right of appeal under section 69(5) of the Immigration and Asylum Act 1999. The appellant duly appealed.

3. The appellant comes from Bujanovc, in southern Serbia. He is an Albanian speaker. Bujanovac is one of the 3 municipalities that make up the Presevo Valley close to the border with Kosovo. These comprise the municipalities of Presevo, Bujanovac and Medvedje. It is estimated that there are up to 100,000 ethnic Albanians living in the area, where they form the majority of the population. There is also a Roma community living there. The appellant claimed that, throughout his life, his parents have suffered harassment, discrimination and persecution as a result of their Roma origin. In 1999, the adjudicator accepted that Serbian soldiers forced him and seven other Roma to bury the bodies of Albanians killed in the conflict. In 2001, he claims that he was accused by Albanians of supporting the Serbian authorities, as a result of which they set fire to his tent and destroyed his home and possessions. The appellant and his mother moved to another part of the village but, on 7 January 2002, he was threatened by local Albanians that he would be killed if he did not move away. Accordingly, he made arrangements to travel to the United Kingdom.

4. The adjudicator rejected the appellant's account of events in 2001, finding it implausible that the appellant had not sought redress with the local police. The adjudicator also found that it was possible for the appellant to move to a larger Roma community where he might benefit from safety in numbers. For these reasons, the adjudicator rejected both limbs of the appellant's appeal.

5. The appellant appealed. In the Notice of Appeal dated 16 November 2003, Ms Wood challenged the adjudicator's findings as to sufficiency of protection in Serbia, internal relocation and adverse credibility. No detailed challenge was made to the adjudicator's decision to dismiss the human rights appeal.

6. When the appeal came for hearing before the Tribunal on 17 March 2004, an application was made to enlarge the grounds of appeal on the basis that the appellant's mental health was such that there was a risk of suicide were he to return to Serbia. This application had, to some extent, been presaged at the hearing before the adjudicator. In paragraph 3 of the determination, Ms Wood had applied for an adjournment to permit the appellant an opportunity to obtain a medical report dealing with psychiatric difficulties that the appellant had experienced since arrival in the United Kingdom. It was indicated that the appellant had been receiving treatment since June or July 2002. Although this had not been advanced in the grounds of appeal, by the time the matter came before the Tribunal there was a volume of medical evidence that the Tribunal was required to consider. In addition, it was clear that the grounds of appeal required amendment to cover the issue. In due course, by amendment and re-amendment, the grounds of appeal were enlarged to cover both Articles 3 and 8 of the ECHR.

7. The Country Report of April 2004, prepared by CIPU deals with Roma in these terms:

Roma

S.6.75. The Republic constitution prohibits discrimination on ethnic or racial grounds. However, discrimination against Roma is widespread in all fields including housing, education, social and health care and employment. Intimidation and harassment is common and violent attacks by skinheads and police has not always adequately dealt with similar groups. There have also been cases of police brutality towards Roma during 2002. [2b] [3f] [9d] [9e] [63a](Section 1) [63b] [75a]

S.6.76. The Humanitarian Law centre, a Serbian NGO and advocacy group, investigated 241 cases of attacks on Roma in the period 2000 - 2002, by individuals and groups, and by the police. [63a](Introduction) 'The most serious and typical incidents' are outlined in the HLC report Roma in Serbia, published December 2003. [63a] There were examples of violent attacks on Roma during 2003.

S.6.77. Amnesty International has reported (in its September 2002 report) that frequent attacks with little apparent protection provided by the authorities have led to many Roma feeling too scared to go out in the evening. [3f](p.17) The Humanitarian Law Center (HLC) reported that judicial proceedings are unduly prolonged when Roma appear as plaintiffs and the police response when Roma are assaulted by private citizens is often inadequate. [63b] However, as reported in the Amnesty International report of September 2002, in May 2001, two skinheads were convicted for an attack on a Roma couple that was accepted by the court as being motivated by ethnic hatred. [3f](p.17)

S.6.78. Incidents of police brutality against Roma continued in 2002 and 2003. HLC investigated several cases of police abuse, including beatings both at police stations and in the street. [63a] Complaints reported by the Humanitarian Law Center include as follows: 'the investigated cases show that during routine procedures such as identity checks police officers regularly maltreated and physically abused Roma. Cases of physical abuse, even of children, were registered in connection with other police work such as execution of court orders.' [63a](sect.1.1) Complaints alleging use of excessive force by police officers have not been properly investigated, according to the HLC in its shadow report of January 2003. [63b](p.18) The report continues, though courts have started sentencing officers for subjecting Roma to acts of torture, sentences are usually light. [63b](p.18)

S.6.79. Societal discrimination against Roma is widespread, ranging from non-admittance to restaurants, nightclubs, and sports centres. [63a](Introduction) Only rarely have Roma been successful in gaining legal remedy for having been denied access to public places, according to the HLC in January 2003. [63b](p.18) In July 2002, the municipal court in Sabac ruled in favour of Roma who were barred from using a public swimming pool: this was the first time that existing law had been used to prove discrimination against Roma. [3f](p.18) In January 2002 HLC filed a lawsuit against the Trezor disco in Belgrade for denying admission to Roma. [63b](p.17) No reports could be found to date (April 2004) as to whether the Trezor case has been resolved.

S.6.80. The US State Department report for 2003 and Amnesty International (AI) (in Concerns in Europe: January - June 2002) state that estimates vary but there are probably about 45,000 Roma Internally Displaced Persons (IDPs) in SaM, mostly from Kosovo. [3d](p.78) [2c](p.12) AI continues that local municipalities are often reluctant to accept them and IDPs have been deprived of humanitarian assistance because "as a nomadic people" they allegedly do not

require it. [3d](p.78) In Belgrade and other towns in Serbia and Montenegro, many Roma IDPs live in squalid illegal settlements, without access to electricity, running water or sanitation, according to the US State Department report for 2003. [2c](p.12) There is a higher incidence of ill-health and infant mortality than among the general population, according to the Humanitarian Legal Center Shadow report of January 2003. [63b](p.19)

S.6.81. Local authorities are inadequate in their rehousing of Roma, according to the US State Department report for 2003, and have evicted Roma from tenancies arbitrarily, leading to great individual difficulty, such as, in July 2003, the Roma family of eight who were left homeless. [2c] (p.17)

S.6.82. The problems for Roma IDPs are exacerbated by difficulties regarding registration and acquiring identity cards. Most who fled from Kosovo do not have adequate documentation or evidence of citizenship and are regularly denied access to health, social welfare and education for their children. [2b][3d][3f] For the most part Roma have no prospect of finding employment, according to the UN Humanitarian Risk analysis report 18, of July 2002. [61a](p.23)

S.6.83. Information from the Humanitarian Law Center's shadow report of 2002 and the US State Department report for 2002 concludes that Roma children have poor access to education, owing partly to language difficulties and to entrance tests that have not been adapted to their circumstances:-

> 'Many Roma children never attend primary school, either for family reasons, because they were judged to be unqualified, or because of societal prejudice. Due to this lack of primary schooling, many Roma children did not learn to speak Serbian, and there was no instruction available in the Romani language. Some Roma children were mistakenly placed in schools for children with emotional disabilities because Romani language and cultural norms made it difficult for them to succeed on standardized tests in Serbian.' [2b](p.15)

In Vojvodina, over 70% of Roma children are either semi-literate or illiterate. [63b](p.28) Some schools have refused to accept Roma children or they have been taught in separate, all Roma classes. [63b](p.28) However, additional lessons have been organised for Roma children by NGOs and there has been an expansion in extra mural education for Roma children. [63b](p.28) UNHCR, with support from the Serbian government, has begun head - start education programmes, to help Roma to achieve better results at school. [63b](p.28)

S.6.84. For several years, Roma organisations have been demanding recognition of their minority status, as is enjoyed by Roma in Romania and Hungary. This demand has been met with the 2003 Framework Convention on the Protection of Rights and Freedoms of National Minorities which specifically designates the Roma community as a national minority in Serbia. [9c] [63b](p.6f.) Under Article 4 (2) of the law, the authorities have an obligation to adopt legislation and measures to "improve the position of persons belonging to the Roma national minority". [63b](p.8.) The new law has led to positive discussions between Roma leaders, government representatives and the OSCE on ways in which the situation for Roma might be improved. [31d]

S.6.85. Also, an inter-ministerial group on Roma rights has been established to draw up a programme of affirmative action measures for Roma, coordinated by the Federal Ministry for National and Ethnic Communities. In mid September 2002, the Ministry signed an agreement with international organisations in Serbia & Montenegro to set up a group of experts to formulate a strategy for the integration of the Roma community. [63b] (p.12) (though no report has been found of such a group being set up to date (September 2003)). There has been an increase in the number of Romani language programmes on radio and TV. [9c]

S.6.86. The BBC followed a Roma family returned to Belgrade from Germany in January 2004. The report noted the family felt they were harassed by their neighbours, including the bullying of the children at school, and faced economic hardship. [8l](p.1) The report continued in general terms about Roma returns from Germany, quoting comments by the Council of Europe on returned Roma likely to face poverty upon return. [8l](p.2) The report continues, reporting that the cases of mixed-marriages are a concern to German human rights activists. [8l](p.2-3) The Serbian Government's response is reported as '"Legally speaking, it's not formal discrimination, but a social problem. Their rights are fully recognised, but not fully implemented."'(Vladimir

> Djuric, Roma Rights Secretariat) [8l](p.3) The report ends with the returned Roma family complaining of the Serbian Government's incapacity to assist in their particular plight. [8l](p.3-4)

8. Ms Wood did not argue the appeal on the basis that all Roma are persecuted or at risk of a violation of their human rights. Rather, she focused upon the medical evidence submitted on the appellant's behalf. For our purposes, this begins with a report dated 2 September 2003 of Dr Laudin, a consultant psychiatrist, of the Whitecliffe community mental health centre to whom the appellant was referred by his GP in March 2003. On page 1 of the report it is said that the GP was concerned that the appellant was depressed and suicidal and had commenced him on an anti-depressant, mainly fluoxetine. In paragraph 4 of the report, the appellant's condition is described as a moderate depressive disorder which had not yet responded to antidepressants and which would require ongoing monitoring of his mental health. It was noted that the appellant would benefit from occupational therapy and/or psychological therapy to address his depression and to stimulate rehabilitation. Should he not receive ongoing treatment by a psychiatrist with the relevant antidepressants, his mental health was likely to deteriorate. With depression, Dr Laudin considered there was a risk of suicide. The report continues:

> "In this man, the risk of suicide is elevated. There is a real risk that he would complete suicide if he was returned to Serbia. Should his depression not be adequately treated he may develop chronic depression which would cause ongoing suffering."

Although it is said that the appellant's depression would benefit from ongoing treatment in a mental health service, it is apparent that the appellant has not taken up this opportunity.

9. Dr Laudin's next report is dated 17 December 2003 and recorded that the appellant's depression appeared to be improving. There were no suicidal thoughts or intent when assessed. His medication included a high dose Venlafaxine (a dual action anti-depressant). Dr Laudin did not know if it was available in Serbia. Our particular attention was drawn to paragraphs 3 to 8 of the report. His depression could deteriorate if there was inadequate social financial support. His detention could cause a deterioration in his depression and increase the risk of suicide. A forced removal of a person with depression would be psychologically traumatic and may increase the risk of suicide. In paragraph 7, the doctor was asked to assess the current risk of suicide and stated:

> "At his recent interview he had no suicidal thoughts or intent. He has experienced suicidal ideas following nightmares. He would contemplate suicide if forced to return to Serbia. The suicide is a risk in depression and it is difficult to predict. The mortality risk of suicide in major depression is twenty times that expected."

10. On page 3 of the report, Dr Laudin provided details of the treatment received. There were outpatient reviews at monthly intervals between April and July 2003 followed by another such review in September. There was an outpatient appointment in December 2003, prior to the preparation of the report. Although the report suggests that it was the consultant who saw the appellant for the purposes of the reviews, a letter from the Woodside Surgery dated 4 August 2003 indicates that the appellant had mainly been seen by Dr Laudin's Senior House Officer, Dr S. Katragadda. We have no report from the SHO and it is not clear by whom the appellant is usually seen. Suffice it to say that the appellant's treatment consists of medicine alone and the outpatient reviews appear to be limited to reviewing the appellant's health and medication. As far as we can tell, there have been no therapeutic sessions.

11. There is a third report from Dr Laudin of 17 February 2004 which contains the following:

> "He [the appellant] stated that if the Home Office came to his house, he would be scared and he would kill himself. If he was locked up, he would kill himself. He stated "it is better to die here." He tried to explain that this is because he is a gypsy and in Serbia he would be caught and paraded. He felt that he had no hope if he cannot stay in this country. He did not know what the future held. He appeared depressed. Whilst talking to me he was anxious and distressed.
>
> "In summary [ ] would be at high risk of suicide if he was detainment and/or deported. He is clearly terrified being returned to Yugoslavia and the probability is high that he would kill himself before or on return to Yugoslavia."

12. A fourth report, dated 29 April 2004, followed a flare-up of events in Kosovo, not Serbia, in which Roma and other minority groups were subjected to violence. Once again, paragraph 2 sets out what the appellant himself had told Dr Laudin. For example, the doctor records the appellant is saying, "It could be me, it could

be my family." This was said in relation to recent unrest in Kosovo and had little to do with the position in Serbia. Dr Laudin, however, gives her impression that the appellant has suicidal ideation and is still at risk of suicide. She concluded:

> "As he still has depression and suicidal ideas, the risk of suicide would be high if he was detained and/or deported."

Looking at the report as a whole, it is apparent that this conclusion is reached by what the appellant has himself told his consultant psychiatrist. On 17 May 2004, Dr Laudin wrote an addendum to her report pointing out that the appellant comes from Serbia and not Kosovo and indicating that she was unable to comment on why recent events in Kosovo were disturbing to the appellant.

13. The appellant himself, as recently as 28 April 2004, in a statement that appears to have been submitted in support of the hearing before the Tribunal, has made his position very clear:

> "If I was ordered to return back to Yugoslavia then I would kill myself because I cannot face returning to that country. I cannot believe my problems would be treated and I would prefer to kill myself rather than to go back and face a life without support and treatment and also to return to a country where I have suffered so much in the past and would be likely to receive similar treatment on my return."

14. Ms Wood referred us to a report dated 25 August 2003 from Dr Hudson who sets out his knowledge of Yugoslav successor states as an academic who speaks Serbo-Croat and is a graduate of the School of Slavonic and East European Studies at the University of London. He is Senior Lecturer in European History and Cultural Politics at the University of Derby. In his report, he draws upon various background materials and gives his opinion as to whether the appellant would be at risk of persecution and similar related questions. In addition, he talks about medical facilities and the availability of psychiatric treatment. At page 10 of the report, paragraph 5, he says:

> "He [the appellant] has no brothers and sisters and no father, therefore it would be unlikely that [ ] would be provided with either family support or indeed any welfare support were he to return to southern Serbia. Indeed, he would be obliged to fall back on his own resources and it is likely that your client would find himself destitute on his return to Bujanovac. Were he to be forced to return to his native country under these conditions, and given the psychological disability, I would find such a measure to be very insensitive indeed. Medical facilities throughout Serbia, and particularly in South Serbia, are rudimentary and mental-health facilities almost non-existent."

It seems to us that the Dr Hudson has omitted to refer to the fact that the appellant will be returning to his mother, who is in her early or mid-fifties. Furthermore, Dr Hudson is not a medical practitioner and there is no reason to believe that his opinion of the mental-health facilities in Serbia is better informed than the information contained in the Country Report.

15. The Country Report of April 2004 speaks of the health facilities in Serbia in these terms:

> **Medical Services**
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> S.5.46. Serb citizens are legally entitled to free health treatment, but years of neglect and corruption under the Milosevic regime have seriously damaged the health service. [7g] A comprehensive survey of Serbia's health service in 2001 was undertaken by the Helsinki Committee for Human Rights in Serbia. The report observed that in hospitals, as well as paying for the bed and food, patients usually have to pay for everything else they need for their treatment. Most hospitals are very old, some lacking running hot water and heating. The ratio of hospital beds to patients is very low (1 bed for 184 patients) and yet they are under-utilised (70%) because of inefficiency. [7g] [48b][48c]
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> S.5.47. When the new government took over in October 2000, it found widespread abuses and misappropriation of funds, describing the situation in the health service as "critical". In late 2000, the entire health system subsisted on foreign aid in kind. The health services in 2001 remained characterised by: an extreme lack of resources at all levels and spheres of work; an urgent need for restructuring; poor organisation and chronic inefficiency. There is a heavy reliance upon foreign donor support to enable the system to function even at its existing low level. The pay of

health workers has been very low and the quality of services suffered because some employees were reduced to moonlighting to earn a minimum subsistence. [7g]

S.5.48. The state of the health service in Serbia is paralleled by the deterioration in the health of its population. As well as inadequate treatment, likely causes are stress, poverty and poor living conditions. The 1999 statistics indicate the highest death rate, the highest suicide rate (among the highest in the world) and the lowest birth rate since 1945. [48b] Infant mortality is up by 3% in the last ten years. Cases of tuberculosis, heart disease and cancer have also increased in recent years, with numbers of cancer cases in 2000 up by 63% from 1991. [48b]

S.5.49. The mental health of the population has also deteriorated. Massive consumption of Bensadine, Bromazepam in and Diazepam, suggests that one in every two people in Serbia are reliant upon sedatives. [7a][33a] Treatment for mental health disorders is available, though numbers of psychiatric staff and bed spaces are limited. [48c]

S.5.52. The Europa Regional Survey: Central and South Eastern Europe 2003 gives basic indicators of health and welfare, covering total fertility (1.6 children per woman); HIV/AIDS (0.19 percent of the 15-49 years population); physicians per 1,000 (2.04 - 1998 figure) and health expenditure per head (US $ 237 in 2000). [1a] (p.545.)

16. We were also referred to a report from RH Research and Consultants (of the same address as Dr Hudson) written by Maria Hudson, a researcher. This records that there would be little guarantee that the appellant would receive the necessary medical treatment, although positive developments have occurred in the level of healthcare offered throughout the former Yugoslavia. The researcher speaks of discrimination against Roma and that medicine would be provided at private cost and "would probably not be available to him for reasons of ethnicity and expense". There is no source provided as to the conclusion that Roma do not have access to medicines.

17. In [2003] UKIAT 00017 *P (Yugoslavia)* (Dr H. H. Storey, chairman), the Tribunal considered whether the risk of suicide might amount to a breach of the ECHR. The Tribunal stated:

The approach of the appellate authorities

16. The grounds in this case are not unique in complaining that the adjudicator failed to attach proper weight to (significant parts of) the medical evidence. The appellate authorities are frequently called upon to evaluate medical reports which deal with the risk facing asylum-seekers if returned in the light of their medical history. How should they go about this task? Drawing on past cases such as *Ademaj* [2002] 00979 and *Cinar* [2002] UKIAT 06624 and in particular on the starred determination of the Tribunal in *AE and FE* [2002] UKIAT 05237, it is possible to identify the following principles:

a) It is not the job of an adjudicator to make clinical judgments. That is the job of medical experts. Equally, however, it is not the function of medical experts to evaluate conditions in an appellant's country of origin. Except in very rare cases they have no expertise about such matters.

b) Albeit not medical experts, adjudicators are perfectly entitled, when evaluating a medical report, to consider to what extent it is based on established medical methodology and criteria. Adjudicators should obviously be cautious about criticising medical reports unnecessarily, particularly given that they do not have the benefit of a medical report from the respondent so as to enable a comparison to be made. But by virtue of the frequency with which the immigration appellate authorities have to examine and assess medical reports in asylum-related cases, a fund of experience and knowledge has been built up, making it possible to identify what is expected from a "good report", and to discern which medical experts, among the many whose reports they see, produce reports based squarely on established medical methodologies and criteria. If confronted, therefore, with a diagnosis (or prognosis), which departs for no good reason from methodology and criteria established within the medical profession, they cannot be expected to overlook that kind of deficiency. And to the extent that a medical report fails to base itself on established medical methodologies and criteria, an adjudicator may be justified in attaching lesser weight to it as a consequence. A medical report purporting to give an in-depth diagnosis of PTSD based on one superficial interview is an obvious example. As the Tribunal highlighted in *AE and FE*, an adjudicator is also entitled to assess to what extent a medical report is based on examination which has been conducted as soon as possible after the time of

the injury or event which is said to have caused the physical or psychological disorder.

c) Irrespective of the quality of the medical report, the assessment of risk upon return that has to be made by an adjudicator must be based on the notion of real risk as established by refugee law and human rights law. That will not necessarily be the same concept of real risk applied by medical experts.

d) Since an adjudicator must base his assessment on a consideration of all the evidence viewed in the round, it is always ultimately a matter for an adjudicator what weight if any to attach to medical evidence. In order to assess whether there is a real risk, the medical evidence has to be placed alongside all the other evidence. Where a doctor's report has based some of its key findings on the truth of what his patient has told him about past experiences and/or current fears, it may well be that an adjudicator who having made a global assessment finds the appellant`s account not credible, will reject that report`s principal findings. Depending on the particular circumstances, medical evidence stating that a person`s injuries or condition is "consistent with" his account of what happened to him in his country of origin may or may not add credence to his claim.

The treatment of self-harm by Strasbourg jurisprudence

17. This case involves a claim based on a high risk of suicide being a foreseeable consequence of removal. How should the appellate authorities approach such a claim? Insofar as the issues arising under the Refugee Convention and the Human Rights Convention are concerned, suicide is self-evidently a type of serious harm: *Pretty v UK* (2002) 35 EHRR 1. Although suicide is a form of self-harm and is to be distinguished from harm inflicted by others, if the real risk of it is a foreseeable consequence of a removal decision, then that may well be enough to establish serious harm under both Conventions. Under the Human Rights Convention we would accept in principle that if the evidence in a case establishes that a removal decision will expose a person to a real risk upon return of committing suicide, then a decision requiring him to return could give rise to a violation of Article 3 and Article 8. So much we understand to be established by cases such as *D v UK* (1997) 24 EHRR 423 and *Bensaid v UK* [2001] INLR 325. In *Bensaid* at paragraphs 36 and 37 it was accepted that in principle deterioration in mental condition causing the risk of self-harm resulting from difficulties in obtaining medication, could fall within the scope of Art 3.

18. The decision was again examined in [2004] UKIAT00053 *N(Kenya)* (Mr J. Barnes, chairman) in which the Tribunal stated:

21. Whilst we acknowledge that there is some authority in Strasbourg jurisprudence for the proposition that the prospective suicide by reason of removal is capable of engaging both Articles 3 and 8 (see also [2003] UKIAT 00017 *P(Yugoslavia)*), there would in our view need to be the clearest possible evidence of a real risk that this would occur which would not otherwise be preventable by appropriate medical supervision both on the part of the removing country and having regard to facilities which might reasonably be expected to exist in the country of destination.

19. In *N* [2003] EWCA Civ 1369, the Court of Appeal considered the place of differential medical treatment in the receiving state:

40. But I am no less clear that *D* should be very strictly confined. I do not say that its confinement is to deathbed cases; that would be a course rule and an unwise one: there may be other instances which press with equal force. That said, in light of the considerations I have described I would hold that the application of Article 3 where the complaint in essence is of want of resources in the applicant's home country (in contrast to what has been available to him in the country from which he is to be removed) is only justified where the humanitarian appeal of the case is so powerful that it could not in reason be resisted by the authorities of a civilised State. This does not, I acknowledge, amount to a sharp legal test; there are no sharp legal tests in this area. I intend only to emphasise that an Article 3 case of this kind must be based on facts which are not only exceptional, but extreme; extreme, that is, judged in the context of cases all or many of which (like this one) demand one's sympathy on pressing grounds. "

20. Finally, we must consider the case of *Kurtolli* [2003] EWHC to 744 (Admin) (Silber J.). This was an application for judicial review to challenge the certificate given by the Secretary of State that the appellant's

appeal was "clearly unfounded" in the sense that his appeal to Germany would reach his human rights. The medical evidence suggested a removal would have damaging implications on the mental health of the appellant's wife. [ ] was concerned about the risk of being returned to Germany. She had suicidal ideation and had attempted suicide by drinking bleach. A report stated:

> "[ ] subjective fear of removal from the UK including to Germany is exceptionally high. [ ] believes she is likely to be separated from her husband either by death or imprisonment, if they return to Germany. The impact of her perceived fears would probably cause a deterioration in her condition such that she would probably succeed in committing suicide whether prior to or after removal. Her previous suicide bid in similar circumstances is an extremely serious indicator of a future attempt and evidence shows that someone who was already made a suicide attempt is likely to be more successful in a subsequent attempt."

21. It is apparent from paragraph 21 of the judgment that Silber J was considering whether if it was arguable on the evidence whether there was a real risk of a significantly increased risk that if the appellant were removed to Germany she would commit suicide. If such a real risk existed her claim based on Article 3 could not be classified as manifestly unfounded. The judge was relying upon the dictum of Dyson LJ in *Razgar* [2003] EWCA Civ 840. Silber J was not considering the merits of the claim but whether there was an arguable case in relation to those merits thereby rendering the certification by the Secretary of State impermissible.

22. On the basis of this material, we come to consider whether the appellant's return to Serbia will involve a violation of his Article 3 or 8 rights. There are two separate enquiries. First, the evidence that, if confronted with an adverse decision by the Tribunal, the risk that the appellant will commit suicide in the United Kingdom. The second aspect of the claim is whether, either during the journey to Serbia or on arrival in Serbia, the appellant is reasonably likely to commit suicide.

The risk in the United Kingdom

23. It is the appellant's evidence that if he receives an indication from the Home Office that he is about to be removed, he will commit suicide. This is what the appellant himself told Dr Laudin and which she recorded in her report of 17 February 2004, which we have set out above. In her summary, Dr Laudin transposes what the appellant has told her to an opinion that "[ ] would be at high risk of suicide if he was detained and/or deported. He is clearly terrified being returned to Yugoslavia and the probability is high that he would kill himself before... return to Yugoslavia." This part of the appellant's case does not revolve upon the adequacy of facilities in the receiving state. Rather, it seeks to prevent the Secretary of State informing the appellant of an event that the appellant will construe as an adverse. In our judgment, this is a far-reaching claim. It presupposes that the medical facilities within the United Kingdom will not be sufficient to contain the risk. Furthermore, it presupposes that, if the Secretary of State chooses to arrest and detain the appellant, the secure accommodation in which he will be kept will be insufficient to contain the threat of suicide.

24. We are bound to express our reservations as to whether this permits the appellant to prevent the Secretary of State (or the adjudicator or the Tribunal) threatening to remove him. It is not a claim that is often raised in the context of civil litigation. If, for example, a person is threatened with eviction upon service of a notice to quit or court order, we doubt whether, if the litigant threatens suicide, Article 3 of the ECHR would prevent the service of either a notice to quit or a court order. We would expect the response to be that there are adequate medical or legal facilities in the United Kingdom capable of minimising the risk, albeit without preventing it completely. The risk of suicide cannot, in our judgment, be separated from the means of preventing it. In the case of this appellant, the means are limited to the provision of medication the level of which has varied from time to time as his condition has altered.

25. We do not think that the threat of removal or detention or the commencement of the process of removal in the United Kingdom would violate the appellant's human rights.

The risk on removal

26. If the appellant is adequately protected from the risk of suicide in the United Kingdom by the existence of adequate healthcare, including medicine, it is difficult to understand how the same approach should not be adopted when considering the receiving state, albeit the medical facilities will often be less extensive.

27. Dr Laudin has also given her opinion that the probability of suicide is very high should the appellant return to Serbia. Once again this appears from the report of 17 February 2004 and once again this appears to be the doctor's opinion resulting from what the appellant has told her. It is within this context that we consider great

care must be taken in evaluating the medical evidence.

28. In our judgment the function of a doctor when interviewing his patient is very different from the function of an adjudicator seeking to evaluate the evidence. It is not for a doctor, in most circumstances, to reject the account given by his patient. Indeed, it is normally necessary, particularly in cases of mental illness, for the doctor to build up a relationship of trust that will be undermined if he rejects his patient's history. There may, of course, be cases where a doctor is required to confront his patient with the untruths of that patient's account. In the context of the present case, however, we see no reason why Dr Laudin was required to contradict what the appellant himself was telling her. In the present case, we can see that in action, as it were, in the appellant telling the doctor about the recent problems in Kosovo when those had very little bearing on difficulties that the appellant might face in Serbia. They were significant enough for the doctor to record them in her report as being a foundation for the appellant's fears. The difficulty that emerges is that the medical opinion is based to some extent on what the doctor has been told as well has upon his or her own professional judgment. Unfortunately, the report does not make it clear the extent to which the doctor's opinion is derived from what the appellant is telling her.

29. There is another difficulty. The doctor is concerned with the clinical risk of suicide by a person suffering from depression. The adjudicator is required to take a holistic approach and to consider the conditions that the appellant will face on return. We note that the appellant's mother continues to live in Serbia and is likely to provide him with family support. We do not know what other relatives or friends or community members will also provide him with support and help. We do not consider that it should be assumed that he will be returned in isolation. (At the very least, the burden is upon the appellant to establish that there will be no one in Serbia to whom he can turn.) The network of help in Serbia might properly be viewed in the context of the support offered in the United Kingdom. There is presently no therapeutic assistance provided and clinical assistance is confined to periodic reviews of the medication supplied. Ms Wood told us that, although the wife of a cousin has a claim for asylum in the United Kingdom, she did not know where the cousin's wife was living and, as far as she was aware, the appellant was not living with her. We were told of no other family members in the United Kingdom who were able to offer assistance.

30. Furthermore, the doctor is comparing the known with the unknown. The known is probably an NHS clinic, whose personnel and services are familiar to the doctor. Contrast this with what the doctor knows of the medical facilities in the receiving state. He may well know that the facilities are not likely to be as good or are definitely worse. Inevitably that colours his assessment of risk. Yet, the adjudicator is often in a much better position to obtain information about the availability of facilities and will know that he is not searching for standards that equate with those in the United Kingdom.

31. We were referred to an article in the Indian Journal of Pharmacology in 2001 showing the Drug Utilisation Trends in Kragujevac in Serbia. We cannot, of course, say whether this is typical of Serbia as a whole but it is apparent that a large range of medicine is available.

32. In our judgment, it was a matter for the adjudicator to consider the entirety of the material before him, including the medical evidence, and make an assessment of risk. The adjudicator accepted the events that took place in 1999 when the appellant was required to assist Serb soldiers in digging graves. He found it noteworthy that no further problems were experienced by the appellant until mid-December 2001. It was then that the appellant stated he was accused by some Albanians of supporting the Serbian authorities. It is, however, apparent from paragraph 18 of the determination, that the adjudicator had difficulty in accepting the entirety of the appellant's account of this incident. In particular, he concluded that if the Roma community in which the appellant lived was particularly small, the appellant would be less vulnerable in a larger community.

33. The appellant speaks Albanian and will be returning to an Albanian area. His passport does not identify his Roma ethnicity. Neither does his name reveal it. For that matter, there is no evidence that he will be identified as a Roma from his physical appearance. That said, we are uncertain that this was ever raised as an issue before the adjudicator and we do not consider it would be safe to rely upon it now.

34. We are satisfied that the appellant is adequately protected from the risk of suicide whilst he remains in the United Kingdom. The decision to remove him would not, therefore, breach his human rights within this jurisdiction.

35. As the Court of Appeal said in *N* [2003] EWCA Civ 1369, where the complaint is in essence a lack of resources in the receiving country, a return will be justified unless the humanitarian appeal is so powerful that it could not reasonably be resisted by the United Kingdom government. This does not apply in the present case, where healthcare facilities in Serbia are adequate to continue the drug regime provided for the appellant. Following *N (Kenya)*, it is for the appellant to establish a real risk of suicide that would not otherwise

be preventable by appropriate medical supervision. These considerations apply whether or not there is evidence of care and supervision provided by relatives and friends available to support the appellant in the receiving country.

36. For these reasons, we consider the adjudicator reached the correct conclusion in dismissing the appeal. We are not satisfied that it is necessary for there to be any additional findings of fact requiring the matter to be remitted for hearing before another adjudicator. Whilst we do not seek to under-estimate the level of harassment and discrimination experienced by the Roma community in Serbia, there remains a sizeable Roma community into which the appellant is able to place himself with adequate security and with appropriate safeguards to prevent his depression causing his suicide.

Decision: The appellant's appeal is dismissed.

Andrew Jordan
Vice President

EIN Index Terms:	ROMA;SERBIA AND MONTENEGRO;SUICIDE RISK;MEDICAL TREATMENT OVERSEAS;MEDICAL EVIDENCE;ECHR ART 3;RISK ON RETURN
Decision:	dismissed
	The following cases can be viewed on EIN:
EIN footnotes:	1) *N* [2003] EWCA Civ 1369
	2) *Kurtolli* [2003] EWHC 744
